IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 5TH FEBRUARY 2007 / 16TH MAGHA 1928

Crl.Rev.Pet.No. 391 of 2003(A)

AGAINST THE ORDER DATED 10/01/2003 IN CC.603/2002 IN CMP.1444/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, KANNUR

.....

REVN. PETITIONER - ACCUSED:

PREMDEV, S/O.KAYYATH DAMODARAN,
KAYYATH HOUSE, KANNUR TOWN, KANNUR DISTRICT.

BY ADV. .
SRI.S.RAJEEV

RESPONDENTS - COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.
(CRIME NO.364 OF 1997 OF KANNUR POLICE STATION)

BY ADV. PUBLIC PROSECUTORSHRI KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

==========

CRL. R.P. NO. 391 OF 2003

==========

Dated this the 5th day of February, 2007

O R D E R

Petitioner is the first accused in C.C. No.603 of 2000 on the file of the Judicial First Class Magistrate No.II, Kannur. The allegation is that petitioner sold 4.79 acres of land with a Saw Mill to the third accused through the second accused without the knowledge and consent of the de facto complainant, who was the co-owner of the property. Based on the first information statement, a crime was registered against the petitioner, Father Stephan Jaira and Sister Innocent. After investigation final report was filed. Petitioner appeared before the Magistrate and pleaded for discharge. Learned Magistrate, after considering the materials on record, found that there are prima facie materials to frame charge against the petitioner and the plea for discharge was dismissed. Challenging that order, petitioner filed this Criminal Revision Petition.

2. Heard learned counsel for the petitioner. Counsel strenuously argued before me that there is no sufficient material

on record to frame charge against the petitioner. According to prosecution, petitioner, C.Ws.1 and 2 are co-owners of the property in question. The case of C.Ws.1 and 2 is that without their knowledge and consent, petitioner sold the property to the third accused. Material on record prima facie shows that allegations attracting offence under Section 420 IPC are made out. Whether those allegations are sufficient to warrant a conviction is a matter to be decided only after trial. It is settled position of law that at this stage this Court cannot appreciate the evidence and hold that the prosecution will not be able to substantiate the charge.

3. Counsel for the petitioner submitted that initially there was a stay of the proceedings in the court below. But subsequently due to the fact that the interim order was for a limited period, learned Magistrate proceeded with the matter and issued non-bailable warrant against the petitioner. It is submitted that in case petitioner surrenders before the Magistrate, he will be remanded to judicial custody on the ground that he is a person absconding.

4. After hearing both sides, I am of the view that

petitioner can be given reasonable time to appear before the Magistrate, file a petition to recall the warrant and also to move for regular bail.

In the result, Criminal Revision Petition is disposed of in the following manner: Prayer for quashing the charge is refused. Petitioner is given two months' time from today to appear before the Magistrate, file a petition for recalling the warrant and also to move for regular bail. In the meanwhile, if the petitioner is arrested in connection with Crime No.364 of 1997, Kannur Police Station, the police Officer arresting petitioner shall release him on bail on condition that he executes a Bond for Rs.25,000/- to the satisfaction of the arresting officer and also undertakes to appear before the Magistrate and apply for regular bail within the time limit fixed by this Court. If any application is filed, learned Magistrate shall dispose of the same in accordance with law.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

==========

CRL. R.P. NO. 391 OF 2003

==========

O R D E R

5TH FEBRUARY, 2007